

**SUMMARY OF MAJORITY AND DISSENTING OPINIONS IN *CITY OF ANAHEIM v. SUPER. CT. OF ORANGE COUNTY (ABLP)* (Cal. Dist Ct. of Appeals, 4<sup>th</sup> Dist., Div. 3, June 27, 2005)**

Apparently, the City of Anaheim made two principal arguments: (1) specific provisions of the 1996 stadium lease agreement bar the change of name, and alternatively (2) the implied covenant of good faith and fair dealing inherent in any contract would also bar this name change.

**Majority Opinion**<sup>1</sup>: Cutting out the legal preliminaries, the discussion of procedures involved on preliminary injunction applications and case citations, the Court's Majority states the gist of the case and its conclusion on the express lease agreement as follows:

"The source of controversy is section 11(f) of the Lease, which states: 'Tenant will change the name of the Team to include the name 'Anaheim' therein, such change to be effective no later than the commencement of the 1997 Season.' Anaheim contends section 11(f) expressly precludes the use of the words 'Los Angeles' in the team name because the parties intended to promote Anaheim nationally as a 'big league' city. Based solely on the express words of this provision, we disagree. As the trial court noted, the name Los Angeles Angels of Anaheim 'technically' complies with the express Lease provisions. Section 11(f) simply requires the Angels to 'include' Anaheim in the team name, and imposes no other restriction. "'Include" is "a term of enlargement rather than limitation." [Citations.] It has been so interpreted by the courts of this state for almost a century.' [Citation.] Thus, if the parties intended to designate Anaheim as the exclusive geographic component of the team name, use of the word 'include' in section 11(f) was not an effective means to convey that intent."<sup>2</sup>

The Majority then rejects the City's argument that the contract must be interpreted in accordance with "custom and usage" in baseball, that a team name first indicate a geographic location followed by the team nickname, for example, "Brooklyn Dodgers," not something like "Mighty Ducks of Anaheim." The Court cites a written declaration submitted to the trial court by Anaheim's former city manager claiming this custom, but then concludes, "Even assuming such a custom and usage, substantial evidence demonstrates the parties did not contract in reference to it." The Court quotes from a reported statement of the Anaheim City Attorney that Disney refused lease language specifically requiring "Anaheim Angels" as the team name, which Disney explained "it might someday want to call its baseball team the Angels of Anaheim or something similar . . . ."

---

<sup>1</sup> The Majority opinion was written by Justice Richard M. Aronson and concurred in by Justice Kathleen E. O'Leary, judges since 1996 and 1986, respectively, and previously lawyers in the California court system. This appellate court is based in Santa Ana, Orange County.

<sup>2</sup> Majority opinion at 7.

Thus, the appellate court endorsed the possible conclusion of the trial court, "that the broad wording of section 11(f) was not formed in reference to the custom and usage in major league baseball, but instead reflected Disney's desire it not apply."<sup>3</sup>

Anaheim's further argument was that the City's name had to be prominent, not subordinate to any other geographical location. The Court's opinion deals with the evidence pro and con on this point in about four pages, citing a provision of the stadium lease giving the Angels sole discretion to adopt marketing policies, and another provision stating the "consideration" for the City's obligations as the Angels' "occupying the Baseball Stadium and the Team playing its home games therein," not the name change from California Angels to a name "including" "Anaheim."<sup>4</sup>

The Court also rejected the City's argument that a name change to "Anaheim Angels" was an implicit understanding essential to the stadium lease. The Court's opinion summarizes the evidence on this point from the declaration of the City's former city manager:

"... Anaheim attempted to revise section 11(f) to specifically require Disney to change the team name to 'Anaheim Angels,' but Disney refused to do so. According to [former City manager] Ruth, Disney declined to revise section 11(f) because it wanted to retain flexibility for a new team owner to change the mascot name. Other evidence contradicted this version of events, however. Anaheim's city attorney, quoted in a newspaper report admitted into evidence, stated Disney did not agree to the name "Anaheim Angels" because Disney wanted flexibility in selecting team names not involving a change of mascot, citing as an example the "Angels of Anaheim." Regardless of why Disney did not agree to restrict itself and any successor owner to naming the team the 'Anaheim Angels,' the parties discussed the issue during negotiations and Anaheim did not attempt to include any further naming restrictions in the Lease."<sup>5</sup>

On this point, the Court cited another lease provision requiring that the stadium signage could include a sponsor's name, but the Angels had to give "prominence to the name 'Anaheim' at least equal to 75% of the size of the sponsor name," pointing out that similar restrictions could have been specified for any change of team name. On this point, the Majority concluded that the trial court "reasonably could conclude Anaheim's primary purpose in reaching the lease agreement was to prevent Disney from walking away from the team purchase and avoid the risk that other potential buyers might relocate the team to a larger market."<sup>6</sup>

---

<sup>3</sup> *Id.* at 9.

<sup>4</sup> *Id.* at 9-12,

<sup>5</sup> *Id.* at 11.

<sup>6</sup> *Id.* at 12.

As a final point on interpreting the express terms of the stadium lease through Disney's "course of dealing" in using the name "Anaheim Angels" and emphasizing the Anaheim connection, the Court countered that Disney had its own theme park and hotels in mind, and that its contractual position was not to "'hardwire' these steps into the Lease because it recognized that doing so might reduce the value it would receive for the team if it were sold to an outsider."<sup>7</sup>

On the City's second argument based on the "implied covenant of good faith and fair dealing," the Majority opinion, in accordance with precedents, looked at the opportunities preserved and those foregone in making the 1996 lease:

"[T]wo of the benefits Disney/ABLP ownership captured in the lease were the right to market the team without interference from Anaheim, and flexibility in the team name. . . . Thus, the trial court could conclude naming the team the 'Los Angeles Angels of Anaheim' did not demonstrate bad faith, but was simply an effort to capture benefits expressly bargained for under the lease agreement."<sup>8</sup>

As against the City's argument that the new name is nonsensical and the court's interpretation of the lease to read "include" would not foreclose other, even more ridiculous names including "Anaheim," the Majority responded,

"Here, during lease negotiations the parties discussed the potential sale of the team to a new owner who would receive the contractual flexibility Disney bargained for in designating the team name. Given (a) the team's previous 30 years as the 'California Angels,' (b) Disney's refusal to stipulate to the name 'Anaheim Angels' in the lease, (c) teams playing in small markets routinely adopt the name of the larger adjacent market, the trial court reasonably could conclude Anaheim should have contemplated a new team owner might change the team name to expand market opportunities."<sup>9</sup>

The Majority disagreed that name changes might denigrate Anaheim, pointing out, "[S]ubstantial evidence supports a finding that the change to 'Los Angeles Angels of Anaheim,' was a marketing decision, in large part due to the large disparity between the television revenues generated by the Los Angeles Dodgers and the former Anaheim Angels."<sup>10</sup> The Court also deferred to the trial court's ability to assess the credibility of Anaheim's evidence in written declarations.<sup>11</sup>

---

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 14-15.

<sup>9</sup> *Id.* at 15 [footnote omitted].

<sup>10</sup> *Id.* at 16 [notwithstanding similar TV ratings].

<sup>11</sup> *Id.* at 17-18.

Finally, the Court's Majority opinion noted for the record its limited role in reviewing the trial court's denial of a preliminary injunction, acknowledging that "the question whether [the Angels] breached the implied covenant is close" and that the result could change with different evidence presented at trial.<sup>12</sup>

Nevertheless, given the Court's clear view of the rightness of Judge Polos's decision, it is difficult to imagine that any new evidence will surface that would change his view of the case. The third paragraph of the Court's majority opinion also emphasized, "[O]ur decision today does not declare any party the ultimate victor. Indeed, at trial, today's opinion places neither party ahead or behind in the count."<sup>13</sup>

Dissent by Presiding Justice Sills<sup>14</sup>: Justice Sills's dissent gives great comfort to the City of Anaheim. Its press release issued on June 28 stresses the limited nature of the appellate court's role in reviewing Judge Polos's initial decision, and then goes on to quote Justice Sills's opinion in five bullet paragraphs. They neglect to note that as far as Judge Polos is concerned his previous decision was affirmed as correct in his review of the law and facts and the Majority opinion constitutes "the law of the case" for the trial court in determining issues of law and for later appellate review, if necessary, in the District Court of Appeals. Only the California Supreme Court could now overturn this decision and it could do so only if it decided in its discretion to review the case.

Justice Sills's opinion appears to take issue with the majority opinion on every point, that Judge Polos abused his discretion "to permit any other city name than Anaheim to be preeminent in the team name."<sup>15</sup> He concedes that the team could have been renamed "Anaheim Angels of California," or even "Budweiser Angels of Anaheim." He belittles the Majority opinion as contrary to the sense of anyone who attended law school, journalists, English teachers, and "Joe Sixpack."<sup>16</sup> His opinion does not discuss the factual evidence presented by the parties as to the negotiation of the lease agreement.

Justice Sills concedes that the Majority opinion consists of "14 legally elegant, well-written, noncontroversial and ultimately irrelevant pages," but wrong at core in implying that Anaheim should have anticipated against the possibility that the Angels could subordinate the Anaheim name to that of another city.<sup>17</sup>

---

<sup>12</sup> *Id.* at 18. Nevertheless, the City of Anaheim is at bat with a two-strike count, challenged to present new evidence in support of its case, principally from the negotiating executives and attorneys for Disney and the City; however, they had ample opportunity to present such evidence at the preliminary injunction hearing.

<sup>13</sup> *Id.* at 2.

<sup>14</sup> Presiding Justice Sills, a California state judge since 1985, and in private practice for twenty years previous, was once on the City Council and Mayor of the City of Irvine.

<sup>15</sup> Dissent at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.*

The Dissent argues the Majority opinion is contrary to the California law of contracts, to the effect that one party with nonspecific discretion to take action under a particular contract, cannot do so as to deprive the other party of benefits it has under the contract. Presiding Justice Sills makes the point that Anaheim paid big bucks to be identified as a major league team's venue and now the name is just an appendage or hiccup, and when the name is shortened--"to chuck Anaheim into the memory hole."<sup>18</sup>

Justice Sills then turns to strict contract interpretation, "ordinary and popular" meanings, "custom and usage" in major league baseball that a team be known by a city or state followed by a nickname. He refers to numbers of Internet references, preferring the team name "Anaheim Mighty Ducks" over the official name, "Mighty Ducks of Anaheim." He refers to the separate geographical identities of Anaheim and Los Angeles in making the new name self-contradictory.<sup>19</sup> He cites a Google search with 620,000 references to the "Los Angeles Angels" that supposedly omit the phrase "of Anaheim."<sup>20</sup>

In a fourth section of his forceful but confusingly organized opinion, Justice Sills relies on the post-contract history of the Disney company using the name "Anaheim Angels" as evidence that this name was required by the 1996 lease.<sup>21</sup> He also argues that the lease permitted only one name change, "such change to be effective no later than the commencement of the 1997 season." (Sec. 11(f).)<sup>22</sup>

Justice Sills concludes, "The contract does not permit the oxymoronic inclusion of the name of another city in the team name."<sup>23</sup>

Lawrence W. Boes, Esq.  
256 Asbury Ave. E.  
Westbury, N.Y. 11590-2023  
Tel. No.: 516-997-1996  
Email: [larrywboes@aol.com](mailto:larrywboes@aol.com)

Copyright—Lawrence W. Boes, Esq., 2005

---

<sup>18</sup> *Id.* at 2-4.

<sup>19</sup> *Id.* at 5-6 [omitting many official and unofficial references to "the greater Los Angeles market."].

<sup>20</sup> *Id.* at 7, n. 8. It's dubious to me this could be verified that 620,000 Internet websites were ever searched in this detail.

<sup>21</sup> *Id.* at 7-8.

<sup>22</sup> *Id.* at 8-9. This contradicts his earlier concession that Disney may have considered the possibility of an unorthodox name, such as "Mighty Angels of Anaheim." He also ignores the evidence from Anaheim's former city manager that Disney wanted to preserve the opportunity of a subsequent team owner to change the team's nickname." Majority opinion at 11.

<sup>23</sup> Dissent at 9. The Angels could point out that the team nickname refers to its Los Angeles origins after moving from Washington and that Los Angeles is not only a city, it is the official name of a metropolitan statistical area comprising Los Angeles-Long Beach-Santa Ana under various federal classifications, see <http://www.census.gov/population/estimates/metro-city/List1.txt>, as well as used in TV and radio ratings and newspaper circulation areas to include Orange County and Anaheim.